

House File 2205 - Introduced

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A BILL FOR

1 An Act relating to electronic monitoring in nursing facilities,
2 and providing penalties.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. SHORT TITLE. This Act shall be known as
2 "Evelyn's Law".

3 Sec. 2. NEW SECTION. 135E.1 Definitions.

4 As used in this chapter, unless the context otherwise
5 requires:

6 1. "*Department*" means the department of inspections and
7 appeals.

8 2. "*Electronic monitoring*" means the placement and use of an
9 electronic monitoring device by a resident in the resident's
10 room in accordance with this subchapter.

11 3. "*Electronic monitoring device*" means a camera or other
12 device that captures, records, or broadcasts audio, video,
13 or both, that is placed in a resident's room and is used to
14 monitor the resident or activities in the room.

15 4. "*Nursing facility*" means the same as defined in section
16 135C.1, and includes the portion of the Iowa veterans home
17 licensed as a nursing facility under chapter 135C.

18 5. "*Resident*" means an individual admitted to a nursing
19 facility.

20 6. "*Resident representative*" means one of the following in
21 the order of priority listed, to the extent the person may
22 reasonably be identified and located:

23 a. The attorney in fact designated to make treatment
24 decisions for the resident in accordance with chapter 144B.

25 b. The guardian of the resident if one has been appointed
26 pursuant to chapter 633.

27 c. The resident's spouse.

28 d. An adult child of the resident or, if the resident has
29 more than one adult child, a majority of the adult children who
30 are reasonably available.

31 e. A parent of the resident, or parents if both are
32 reasonably available.

33 f. An adult sibling of the resident.

34 Sec. 3. NEW SECTION. 135E.2 Electronic monitoring.

35 1. A resident or a resident representative may conduct

1 electronic monitoring of the resident's room through the use of
2 an electronic monitoring device placed in the resident's room
3 pursuant to this chapter.

4 2. Nothing in this section precludes the use of electronic
5 monitoring otherwise allowed by law.

6 Sec. 4. NEW SECTION. 135E.3 Consent to electronic
7 monitoring.

8 1. Except as otherwise provided in this chapter, a resident
9 must consent to electronic monitoring in the resident's room
10 in writing on a notification and consent form prescribed
11 by the department. If the resident has not affirmatively
12 objected to electronic monitoring and the resident's medical
13 professional determines that the resident lacks the ability
14 to understand and appreciate the nature and consequences of
15 electronic monitoring, the resident representative may consent
16 on behalf of the resident. For purposes of this subsection,
17 a resident affirmatively objects when the resident orally,
18 visually, or through the use of auxiliary aids or services
19 declines electronic monitoring. The resident's response shall
20 be documented on the notification and consent form.

21 2. Prior to a resident representative consenting on behalf
22 of a resident, the resident shall be asked if the resident
23 wants electronic monitoring to be conducted. The resident
24 representative shall explain all of the following to the
25 resident:

26 a. The type of electronic monitoring device to be used.

27 b. The standard conditions or restrictions that may be
28 placed on the electronic monitoring device's use including as
29 specified in the list of standard conditions or restrictions
30 contained in the notification and consent form completed by the
31 resident as provided in section 135E.6.

32 c. The dissemination and use of any recording as provided
33 under sections 135E.10 and 135E.11.

34 d. The resident's ability to decline all recordings.

35 3. A resident, or resident representative when consenting

1 on behalf of the resident, may consent to electronic monitoring
2 with any conditions or restrictions of the resident's or
3 resident representative's choosing, including the list
4 of standard conditions or restrictions contained in the
5 notification and consent form completed by the resident
6 as provided in section 135E.6. A resident, or resident
7 representative when consenting on behalf of the resident, may
8 request that the electronic monitoring device be turned off
9 or the visual or audio recording component of the electronic
10 monitoring device be blocked at any time.

11 4. Prior to implementing electronic monitoring, a resident,
12 or resident representative when acting on behalf of the
13 resident, shall obtain the written consent on the notification
14 and consent form of any other resident who is a roommate
15 residing in the shared room. A roommate's or roommate's
16 resident representative's written consent shall comply with
17 the requirements of this section. Consent by a roommate or
18 a roommate's resident representative under this subsection
19 authorizes the resident's use of any recording obtained under
20 this section as provided under sections 135E.10 and 135E.11.

21 5. Any resident conducting electronic monitoring shall
22 immediately remove or disable an electronic monitoring device
23 prior to a new resident who will be a roommate moving into
24 a shared room, unless the resident conducting electronic
25 monitoring obtains the new roommate's or new roommate's
26 resident representative's written consent as provided under
27 this section prior to the new roommate moving into the shared
28 room. Upon obtaining the new roommate's or new roommate's
29 resident representative's signed notification and consent form
30 and submitting the form to the nursing facility as required
31 under section 135E.5, the resident may resume electronic
32 monitoring.

33 6. The resident or roommate, or the resident representative
34 or roommate's resident representative if the representative is
35 consenting on behalf of the resident or roommate, may withdraw

1 consent at any time and the withdrawal of consent shall be
2 documented on the original consent form as provided under
3 section 135E.5.

4 **Sec. 5. NEW SECTION. 135E.4 Refusal of roommate to consent.**

5 If a resident of a nursing facility who is residing in a
6 shared room, or the resident representative of such a resident
7 when acting on behalf of the resident, wants to conduct
8 electronic monitoring and another resident living in or moving
9 into the same shared room refuses to consent to the use of an
10 electronic monitoring device, the nursing facility shall make
11 a reasonable attempt to accommodate the resident who wants to
12 conduct electronic monitoring. A nursing facility has met
13 the requirement to make a reasonable attempt to accommodate
14 a resident or resident representative who wants to conduct
15 electronic monitoring when, upon notification that a roommate
16 has not consented to the use of an electronic monitoring device
17 in the resident's room, the nursing facility offers to move one
18 of the residents to another shared room that is available at
19 the time of the request that accommodates the resident. If
20 a resident chooses to reside in a private room in order to
21 accommodate the use of an electronic monitoring device, the
22 resident shall be subject to a private room rate. If a nursing
23 facility is unable to accommodate a resident due to lack of
24 space, the nursing facility shall reevaluate the request
25 periodically until the request is fulfilled.

26 **Sec. 6. NEW SECTION. 135E.5 Notice and consent form**
27 **submitted to nursing facility.**

28 1. Electronic monitoring may begin only after the resident
29 or resident representative who intends to place an electronic
30 monitoring device in the resident's room and any roommate or
31 roommate's resident representative completes a notification and
32 consent form and submits the form to the nursing facility.

33 2. Upon receipt of the required, completed notification and
34 consent form, the nursing facility shall place the original
35 form in the resident's file, and a copy of the form in any

1 roommate's file. The nursing facility shall provide a copy to
2 the resident and the resident's roommate, as applicable.

3 3. If a resident or roommate, or the resident representative
4 or roommate's resident representative if the representative
5 is consenting on behalf of the resident or roommate, chooses
6 to alter the conditions under which consent to electronic
7 monitoring is given or chooses to withdraw consent to
8 electronic monitoring, the nursing facility shall make
9 available the original notification and consent form so that
10 the original form may be updated. Upon receipt of the updated
11 original form, the nursing facility shall place the updated
12 original form in the resident's file. The nursing facility
13 shall provide a copy of the updated form to the resident and
14 the resident's roommate, as applicable.

15 4. If a new roommate, or the new roommate's resident
16 representative when consenting on behalf of the new roommate,
17 does not consent to electronic monitoring and submit a
18 completed notification and consent form to the nursing
19 facility, and the resident conducting the electronic monitoring
20 does not remove or disable an existing electronic monitoring
21 device, the nursing facility shall remove the electronic
22 monitoring device.

23 5. If a roommate, or the roommate's resident representative
24 when withdrawing consent on behalf of the roommate, submits
25 an updated notification and consent form withdrawing consent
26 and the resident conducting electronic monitoring does not
27 remove or disable the electronic monitoring device, the nursing
28 facility shall remove the electronic monitoring device.

29 **Sec. 7. NEW SECTION. 135E.6 Notification and consent form**
30 **requirements.**

31 1. The notification and consent form completed by the
32 resident shall include, at a minimum, all of the following
33 information:

34 a. The resident's signed consent to electronic monitoring or
35 the signature of the resident representative, if applicable.

1 If a resident representative signs the consent form, the form
2 shall document all of the following:

3 (1) The date the resident was asked if the resident wants
4 electronic monitoring to be conducted.

5 (2) Any person present when the resident was asked.

6 (3) An acknowledgment that the resident did not
7 affirmatively object.

8 (4) The source of authority allowing the resident
9 representative to sign the notification and consent form on the
10 resident's behalf.

11 *b.* The resident's roommate's signed consent or the signature
12 of the roommate's resident representative, if applicable. If a
13 roommate's resident representative signs the consent form, the
14 form shall document all of the following:

15 (1) The date the roommate was asked if the roommate wants
16 electronic monitoring to be conducted.

17 (2) Any person present when the roommate was asked.

18 (3) An acknowledgment that the roommate did not
19 affirmatively object.

20 (4) The source of authority allowing the resident
21 representative to sign the notification and consent form on the
22 roommate's behalf.

23 *c.* The type of electronic monitoring device to be used.

24 *d.* Any installation needs, such as mounting of a device to
25 a wall or ceiling.

26 *e.* The proposed date of installation for scheduling
27 purposes.

28 *f.* A copy of any contract for maintenance of the electronic
29 monitoring device by a commercial entity.

30 *g.* A list of standard conditions or restrictions that the
31 resident or a roommate may elect to place on the use of the
32 electronic monitoring device including but not limited to all
33 of the following:

34 (1) Prohibiting audio recording.

35 (2) Prohibiting video recording.

1 (3) Prohibiting broadcasting of audio or video.

2 (4) Turning off the electronic monitoring device or
3 blocking the visual recording component of the electronic
4 monitoring device for the duration of an exam or procedure by a
5 health care professional.

6 (5) Turning off the electronic monitoring device or
7 blocking the visual recording component of the electronic
8 monitoring device while dressing or bathing is performed.

9 (6) Turning off the electronic monitoring device for
10 the duration of a visit with a spiritual adviser, ombudsman,
11 attorney, financial planner, intimate partner, or other
12 visitor.

13 *h.* Any other condition or restriction elected by the
14 resident or roommate on the use of an electronic monitoring
15 device.

16 *i.* A statement of the circumstances under which a recording
17 may be disseminated under section 135E.10.

18 *j.* A signature box to document if the resident or roommate
19 withdraws consent.

20 2. A nursing facility shall make the notification and
21 consent form available to the residents and inform residents of
22 the option to conduct electronic monitoring of the resident's
23 room.

24 Sec. 8. NEW SECTION. 135E.7 Cost and installation.

25 1. A resident who chooses to conduct electronic monitoring
26 shall do so at the resident's own expense, including payment of
27 any purchase, installation, maintenance, and removal costs.

28 2. If a resident chooses to place an electronic monitoring
29 device that uses internet technology for visual or audio
30 monitoring, the resident may be responsible for contracting
31 with an internet service provider.

32 3. The nursing facility shall make a reasonable attempt
33 to accommodate the resident's installation needs, including
34 allowing access to the nursing facility's public-use internet
35 or wi-fi systems when available for other public uses.

1 4. All electronic monitoring device installations and
2 supporting services shall comply with the requirements of the
3 national fire protection association 101 life safety code.

4 5. A nursing facility shall not charge a resident a fee
5 for the costs of electricity used by the electronic monitoring
6 device.

7 Sec. 9. NEW SECTION. 135E.8 Notice to visitors.

8 1. A nursing facility shall post a sign at each nursing
9 facility entrance accessible to visitors that states
10 "Electronic monitoring devices may be present in the rooms of
11 residents to record persons and activities".

12 2. A nursing facility shall post a sign clearly and
13 conspicuously at the entrance to a resident's room where
14 electronic monitoring is being conducted. The notice shall
15 state "This room is electronically monitored".

16 3. The nursing facility is responsible for installing and
17 maintaining the signage required in this section.

18 Sec. 10. NEW SECTION. 135E.9 Obstruction of electronic
19 monitoring devices.

20 1. A person shall not knowingly hamper, obstruct, tamper
21 with, or destroy an electronic monitoring device placed in
22 a resident's room without the permission of the resident or
23 resident representative.

24 2. A person shall not knowingly hamper, obstruct, tamper
25 with, or destroy a video or audio recording obtained through
26 the use of an electronic monitoring device in accordance with
27 this chapter.

28 3. It is not a violation of this section for a person to
29 turn off the electronic monitoring device or block the visual
30 recording component of the electronic monitoring device at the
31 direction of the resident or resident representative, or if
32 consent has been withdrawn.

33 4. A person who violates this section is guilty of a serious
34 misdemeanor.

35 Sec. 11. NEW SECTION. 135E.10 Dissemination of recordings.

1 1. A person shall not access any video or audio recording
2 created through electronic monitoring under this chapter
3 without the written consent of the resident or resident
4 representative.

5 2. Except as otherwise required by law, a recording or copy
6 of a recording created as provided in this chapter may only be
7 disseminated for the purpose of addressing health, safety, or
8 welfare concerns of a resident.

9 3. A person accessing or disseminating a recording or copy
10 of a recording created as provided in this section in violation
11 of this section is guilty of a serious misdemeanor.

12 Sec. 12. NEW SECTION. 135E.11 **Admissibility of evidence.**

13 Subject to applicable rules of evidence and procedure, any
14 video or audio recording created through electronic monitoring
15 under this chapter may be admitted into evidence in a civil,
16 criminal, or administrative proceeding if the contents of the
17 recording have not been edited or artificially enhanced and the
18 recording includes the date and time the events occurred.

19 Sec. 13. NEW SECTION. 135E.12 **Liability — penalties.**

20 1. A nursing facility is not civilly or criminally liable
21 for the disclosure of a recording by a resident or a person who
22 consents on behalf of a resident for any purpose not authorized
23 by this chapter.

24 2. A nursing facility is not civilly or criminally liable
25 for a violation of a resident's right to privacy arising out
26 of any electronic monitoring conducted in accordance and in
27 compliance with this chapter.

28 3. A nursing facility that knowingly violates this chapter
29 shall be subject to licensee discipline pursuant to chapter
30 135C.

31 Sec. 14. NEW SECTION. 135E.13 **Resident protections.**

32 1. A nursing facility shall not do any of the following:

33 a. Refuse to admit a potential resident or remove a resident
34 because the nursing facility disagrees with the potential
35 resident's or the resident's decisions regarding electronic

1 process to be followed if a roommate refuses to consent; the
2 provision of notice to the nursing facility; the notification
3 and consent form requirements; the responsibility for the
4 cost and installation relating to the electronic monitoring;
5 penalties for obstruction of electronic monitoring devices;
6 the dissemination of recordings created through electronic
7 monitoring; the admissibility of evidence created through
8 electronic monitoring; liability and penalties for violations
9 of the bill; resident protections; and reporting requirements.
10 The bill also directs the department of inspections and appeals
11 to prescribe the notification and consent form described in
12 the bill and to make the form available on the department's
13 internet site.